

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 270 of 1999
with
CIVIL APPLICATION No 4834 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

CHHATRASINH JETHABHAI CHAUHAN

Versus

MAHIDA CHHATRASINH JITSINH

Appearance:

MR NS DESAI for Appellant

MR SS PANESAR for Respondent No. 3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 17/08/1999

ORAL JUDGEMENT

In this Appeal from Order, the appellant herein
has brought in challenge the order dated 7.5.1999
recorded below Ex.62 in Special Civil Suit No.42 of 1997
by learned Civil Judge (S.D.), Nadiad whereby he
dismissed the application with costs filed by the

appellant against the respondents claiming the relief of injunction restraining respondent No.3 from auctioning the tractor bearing registration No.GJ-E-7549 during pendency of the suit.

2. The present appellant is the plaintiff whereas the present respondents are the defendants and for the sake of brevity and convenience, they are hereinafter referred to as 'plaintiff' and 'defendants' respectively.

3. The plaintiff filed the suit against the defendants for a permanent injunction inter alia stating that he has purchased the said tractor from defendants Nos.1 & 2 and thereby he has become the owner of the said tractor. It was further averred that defendant No.3 advanced loan against the said tractor to defendant No.2 and pursuant to that, respondent No.2 hypothecated the said tractor to respondent No.3. It is further averred that, by virtue of the order recorded by the High Court of Gujarat in Special Civil Application No.6898 of 1998, the plaintiff has deposited Rs.18,000/- with defendant No.3 and in spite of the above-said facts, defendant No.3 has forcibly taken possession of the said tractor under the pretext of non-payment of instalments granted in favour of the original borrower i.e. defendant Nos.1 & 2, therefore, the suit for permanent injunction was filed.

4. Application Ex.62 was presented for the relief of interim injunction restraining defendant No.3 not to auction the said tractor which they have forcibly taken from the plaintiff during the pendency of the suit.

5. The said application was contested by defendant No.3 by filing written statement wherein it was contended that there was no privity of contract between the plaintiff and defendant No.3. Since finance was made to the original borrower - defendant Nos.1 & 2, the plaintiff had no right to file the suit as well as the application for injunction and, therefore, there was no prima facie case in favour of the plaintiff, balance of convenience also not tilted in his favour. Therefore, it was requested to dismiss the application.

6. The learned trial Judge, after hearing both the parties, came to the conclusion that there was no privity of contract between the plaintiff and respondent No.3 and resultantly he dismissed the application.

7. Learned advocate Mr.N.S.Desai made his submissions and he reiterated that, by virtue of the

order of this Court recorded in Special Civil Application No.6898 of 1998, the plaintiff has deposited Rs.18,000/with the bank, therefore, there was a privity of contract between the plaintiff and defendant No.3 and, on the aforesaid premise, there is a prima facie case in favour of the plaintiff and balance of convenience also lies in his favour. He has further contended that the plaintiff is ready and willing to pay the outstanding amount dues against the said tractor by way of instalments. Therefore, defendant No.3 - bank may be directed to reschedule the payment of loan advanced to defendant Nos.1 & 2 by way of instalments which shall be payable by the plaintiff.

8. Learned advocate Mr.S.S.Panesar for respondent No.3 also made his submissions. He supported the order impugned throughout and contended that there was no privity of contract between the plaintiff and defendant No.3 and since the order recorded by the trial court does not suffer from any infirmity, no interference of this court is called for and, therefore, this Appeal from Order may be dismissed with costs.

9. I have given my anxious consideration to the rival contentions raised by both the parties. It is seen that Special Civil Application No.6898 of 1998 filed by the plaintiff in this Court was withdrawn and this Court has directed the trial Court to dispose of the application filed by the plaintiff in accordance with law and pursuant to the same, the learned trial Judge has, after hearing the parties, recorded the conclusion. There is no dispute that the original transaction has taken place between defendant No.2 - original borrower and defendant No.3 - bank. Defendant No.2 was the owner of the tractor and he hypothecated the said tractor to respondent No.3 bank and has taken advance against such hypothecation of the tractor. Therefore, there was a privity of contract between defendant No.2 and defendant No.3 - bank only. Subsequently, defendant No.2 has sold the said tractor to the plaintiff, therefore, admittedly, there was no privity of contract between the plaintiff and defendant No.3. It would also be seen that Clauses 13 & 14 of the hypothecation agreement, which was placed reliance and produced at Mark 55/1, inter alia clarify that non-payment of instalment and interest would give right to the bank for taking possession of the said tractor and also entitle to recover the amount advanced by auctioning the said tractor.

10. In view of the aforesaid state of affairs, since there was no privity of contract between the plaintiff

and defendant No.3, defendant No.3 has acted upon the contract entered into between defendant No.2 and defendant No.3 and because of non-payment of instalments, they have rightly taken possession of the tractor, therefore, the plaintiff cannot restrain defendant No.3 from auctioning the said tractor. The learned trial Judge has considered all these aspects and recorded the order which is in consonance with the hypothecation agreement. On the facts and circumstances of the case, no other conclusion could be arrived at except the one reached by the learned trial Judge, which does not require any interference by this Court.

11. In the premise, there is no substance in this Appeal from Order which is liable to be dismissed at the inception. In the net result, the Appeal from Order is dismissed at the threshold with costs.

12. In view of dismissal of the Appeal from Order, there shall be no order on Civil Application No.4834 of 1999. The order of maintaining status quo recorded therein shall stand vacated forthwith.

(KMG Thilake)

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